

AMENDED IN SENATE JANUARY 4, 2006

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 870

Introduced by Senator Escutia

February 22, 2005

~~An act to amend Section 42403.5 of, to add Section 42407.5 to, and to add Article 3.1 (commencing with Section 42411) and Article 3.2 (commencing with Section 42417) to Chapter 4 of Part 4 of Division 26 of, the Health and Safety Code, relating to air pollution. An act to amend Sections 39674, 42400, 42400.1, 42400.2, 42400.3, 42402, 42402.1, 42402.2, and 42402.3 of, and to add Sections 42407.5 and 42409.5 to, the Health and Safety Code, relating to air pollution.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 870, as amended, Escutia. Air quality: violations: nonvehicular sources: ~~business~~ penalties.

~~Existing~~

~~(1) Existing law vests local and regional authorities, defined as the governing body of any city, county, or air pollution control district or air quality management district with the primary responsibility for control of air pollution from all sources other than vehicular sources. Existing law establishes maximum criminal and civil penalties for any person, as defined, for violations of air pollution laws from nonvehicular sources.~~

~~This bill would redefine "person" to exclude specified entities from the current maximum criminal and civil penalty provisions. The bill would instead establish separate, but identical offenses for entities, as defined, resulting from nonvehicular sources, with increased fines and~~

~~civil penalties for those violations. This bill would specify that penalties collected from entities be deposited into the Air Pollution Business Penalty Fund, created by this bill, to be used for specified purposes. The bill would require the State Air Resources Board to establish a statewide enforcement policy to address the lack of enforcement in specified communities, and to identify strategies to bring specified areas into compliance. The bill would require notices to be mailed to each residence and business within a one-mile radius of the facility in violation, and to persons requesting notice in specified circumstances. The bill would require each district and the state board to post specified information relating to enforcement on Web sites, and would require the state board to audit each district at least once every 4 years for its enforcement history, as provided.~~

This bill would increase the civil penalty for specified violations of air pollution laws from nonvehicular sources from \$1,000 to \$10,000. The bill would eliminate certain affirmative defenses and civil liability provisions relating to violations of air quality laws, as provided, and would specify that each person, entity, as defined, or property affected by a discharge of air contaminants is a separate offense for specific violations. The bill would, on and after June 1, 2007, assess an additional civil penalty of not more than \$100,000 per day for each violation committed by a serious and chronic violator of nonvehicular air pollution laws. The bill would require the State Air Resources Board, by March 1, 2007, to define, by regulation, the term “serious and chronic violator.” The bill would require that penalties and settlements collected from serious and chronic violators be deposited into the Enhanced Air Pollution Penalties Fund, which would be created by this bill, to be used, upon appropriation, for specified purposes.

Because this bill would add new crimes by, among other things, specifying that each person, entity, or property affected by a discharge of air contaminants is a separate offense for specific violations of air pollution laws, this bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 39674 of the Health and Safety Code is
2 amended to read:

3 39674. ~~(a) Except as otherwise provided in subdivision (b),~~
4 ~~any~~ Any person who violates any rule or regulation, emission
5 limitation, ~~or~~ permit condition, order, fee requirement, filing
6 requirement, duty to allow or carry out inspection or monitoring
7 activities, or duty to allow entry for which delegation or approval
8 of implementation and enforcement authority has been obtained
9 pursuant to subdivision (l) of Section 112 of the Clean Air Act
10 (42 U.S.C. Section 7412(l)) or the regulations adopted pursuant
11 thereto, adopted pursuant to Section 39659 or Article 4
12 (commencing with Section 39665) or which is implemented and
13 enforced as authorized by subdivision (b) of Section 39658 is
14 strictly liable for a civil penalty not to exceed ~~one~~ ten thousand
15 dollars ~~(\$1,000)~~ (\$10,000) for each day in which the violation
16 occurs.

17 ~~(b) (1) Any person who violates any rule or regulation,~~
18 ~~emission limitation, permit condition, order fee requirement,~~
19 ~~filing requirement, duty to allow or carry out inspection or~~
20 ~~monitoring activities, or duty to allow entry for which delegation~~
21 ~~or approval of implementation and enforcement authority has~~
22 ~~been obtained pursuant to subdivision (l) of Section 112 of the~~
23 ~~Clean Air Act (42 U.S.C. Section 7412(l)) or the regulations~~
24 ~~adopted pursuant thereto, adopted pursuant to Section 39659 or~~
25 ~~Article 4 (commencing with Section 39665) or which is~~
26 ~~implemented and enforced as authorized by subdivision (b) of~~
27 ~~Section 39658 is strictly liable for a civil penalty not to exceed~~
28 ~~ten thousand dollars (\$10,000) for each day in which the~~
29 ~~violation occurs.~~

30 ~~(2) Where a civil penalty in excess of one thousand dollars~~
31 ~~(\$1,000) for each day of violation is sought, there is no liability~~
32 ~~under paragraph (1) if the person accused of the violation alleges~~
33 ~~by affirmative defense and establishes that the violation is caused~~
34 ~~by an act which was not the result of intentional or negligent~~
35 ~~conduct. In a district in which a Title V permit program has been~~

1 ~~fully approved, this paragraph shall not apply to a violation of~~
2 ~~federally enforceable requirements that occur at a Title V source.~~

3 ~~(3) Paragraph (2) shall not apply to a violation of a toxic air~~
4 ~~contaminant rule, regulation, permit, order, fee requirement,~~
5 ~~filing requirement, duty to allow or carry out inspection or~~
6 ~~monitoring activities, or duty to allow entry for which delegation~~
7 ~~or approval of implementation and enforcement authority has~~
8 ~~been obtained pursuant to subdivision (f) of Section 112 of the~~
9 ~~Clean Air Act (42 U.S.C. Sec. 7412(f)), or the regulations~~
10 ~~adopted pursuant thereto.~~

11 *SEC. 2. Section 42400 of the Health and Safety Code is*
12 *amended to read:*

13 42400. (a) Except as otherwise provided in Section 42400.1,
14 42400.2, 42400.3, 42400.3.5, or 42400.4, any person who
15 violates this part, or any rule, regulation, permit, or order of the
16 state board or of a district, including a district hearing board,
17 adopted pursuant to Part 1 (commencing with Section 39000) to
18 Part 4 (commencing with Section 41500), inclusive, is guilty of a
19 misdemeanor and is subject to a fine of not more than ~~one ten~~
20 ~~thousand dollars (\$1,000)~~ (\$10,000) or imprisonment in the
21 county jail for not more than six months, or both.

22 (b) If a violation under subdivision (a) with regard to the
23 failure to operate a vapor recovery system on a gasoline cargo
24 tank is directly caused by the actions of an employee under the
25 supervision of, or of any independent contractor working for, any
26 person subject to this part, the employee or independent
27 contractor, as the case may be, causing the violation is guilty of a
28 misdemeanor and is punishable as provided in subdivision (a).
29 That liability shall not extend to the person employing the
30 employee or retaining the independent contractor, unless that
31 person is separately guilty of an action that violates this part.

32 (c) Any person who owns or operates any source of air
33 contaminants in violation of Section 41700 ~~that causes actual~~
34 ~~injury, as defined in subdivision (d), to the health or safety of a~~
35 ~~considerable number of persons or the public~~ is guilty of a
36 misdemeanor and is subject to a fine of not more than fifteen
37 thousand dollars (\$15,000) or imprisonment in the county jail for
38 not more than nine months, or both. *Each person, entity, or*
39 *property affected by a discharge in violation of Section 41700 is*
40 *a separate offense.*

1 ~~(d) As used in this section, “actual injury” means any physical~~
2 ~~injury that, in the opinion of a licensed physician and surgeon,~~
3 ~~requires medical treatment involving more than a physical~~
4 ~~examination.~~

5 ~~(e) Each day during any portion of which a violation of~~
6 ~~subdivision (a) or (c) occurs is a separate offense.~~

7 *SEC. 3. Section 42400.1 of the Health and Safety Code is*
8 *amended to read:*

9 42400.1. (a) Any person who negligently emits an air
10 contaminant in violation of any provision of this part or any rule,
11 regulation, permit, or order of the state board or of a district
12 pertaining to emission regulations or limitations is guilty of a
13 misdemeanor and is punishable by a fine of not more than
14 twenty-five thousand dollars (\$25,000), or imprisonment in a
15 county jail for not more than nine months, or by both that fine
16 and imprisonment.

17 (b) Any person who negligently emits an air contaminant in
18 violation of Section 41700 that causes great bodily injury, as
19 defined by Section 12022.7 of the Penal Code, to, or death of,
20 any person, is guilty of a misdemeanor and is punishable by a
21 fine of not more than one hundred thousand dollars (\$100,000),
22 or imprisonment in a county jail for not more than one year, or
23 by both that fine and imprisonment. *Each person, entity, or*
24 *property affected by a discharge in violation of this subdivision is*
25 *a separate offense.*

26 (c) Each day during any portion of which a violation occurs is
27 a separate offense.

28 *SEC. 4. Section 42400.2 of the Health and Safety Code is*
29 *amended to read:*

30 42400.2. (a) Any person who emits an air contaminant in
31 violation of any provision of this part, or any order, rule,
32 regulation, or permit of the state board or of a district pertaining
33 to emission regulations or limitations, and who knew of the
34 emission and failed to take corrective action within a reasonable
35 period of time under the circumstances, is guilty of a
36 misdemeanor and is punishable by a fine of not more than forty
37 thousand dollars (\$40,000), or imprisonment in a county jail for
38 not more than one year, or by both that fine and imprisonment.

39 (b) For purposes of this section, “corrective action” means the
40 termination of the emission violation or the grant of a variance

1 from the applicable order, rule, regulation, or permit pursuant to
2 Article 2 (commencing with Section 42350). If a district
3 regulation regarding process upsets or equipment breakdowns
4 would allow continued operation of equipment which is emitting
5 air contaminants in excess of allowable limits, compliance with
6 that regulation is deemed to be corrective action.

7 (c) Any person who owns or operates any source of air
8 contaminants in violation of Section 41700 that causes great
9 bodily injury, as defined by Section 12022.7 of the Penal Code,
10 to, or death of, any person, and who knew of the emission and
11 failed to take corrective action within a reasonable period of time
12 under the circumstances, is guilty of a misdemeanor and is
13 punishable by a fine of not more than two hundred fifty thousand
14 dollars (\$250,000), or imprisonment in a county jail for not more
15 than one year, or by both that fine and imprisonment. *Each*
16 *person, entity, or property affected by a discharge in violation of*
17 *this subdivision is a separate offense.*

18 (d) Each day during any portion of which a violation occurs
19 constitutes a separate offense.

20 *SEC. 5. Section 42400.3 of the Health and Safety Code is*
21 *amended to read:*

22 42400.3. (a) Any person who willfully and intentionally
23 emits an air contaminant in violation of any provision of this part
24 or any rule, regulation, permit, or order of the state board or of a
25 district, pertaining to emission regulations or limitations is guilty
26 of a misdemeanor and is punishable by a fine of not more than
27 seventy-five thousand dollars (\$75,000), or imprisonment in a
28 county jail for not more than one year, or by both that fine and
29 imprisonment.

30 (b) Any person who willfully and intentionally, or with
31 reckless disregard for the risk of great bodily injury, as defined
32 by Section 12022.7 of the Penal Code, to, or death of, any
33 person, emits an air contaminant in violation of Section 41700
34 that results in any unreasonable risk of great bodily injury to, or
35 death of, any person, is guilty of a public offense and is
36 punishable by a fine of not more than one hundred twenty-five
37 thousand dollars (\$125,000), or imprisonment in a county jail for
38 not more than one year, or by both that fine and imprisonment.
39 However, if the defendant is a corporation, the maximum fine
40 may be up to five hundred thousand dollars (\$500,000). *Each*

1 *person, entity, or property affected by a discharge in violation of*
2 *this subdivision is a separate offense.*

3 (c) Any person who willfully and intentionally, or with
4 reckless disregard for the risk of great bodily injury, as defined
5 by Section 12022.7 of the Penal Code, to, or death of, any person
6 emits an air contaminant in violation of Section 41700 that
7 causes great bodily injury to, or death of, any person is guilty of
8 a public offense, and is punishable by a fine of not more than two
9 hundred fifty thousand dollars (\$250,000), or imprisonment in a
10 county jail for not more than one year, or both that fine and
11 imprisonment, or is punishable by a fine of not more than two
12 hundred fifty thousand dollars (\$250,000), or imprisonment in
13 the state prison, or by both that fine and imprisonment. If the
14 defendant is a corporation, the maximum fine may be up to one
15 million dollars (\$1,000,000). *Each person, entity, or property*
16 *affected by a discharge in violation of this subdivision is a*
17 *separate offense.*

18 (d) Each day during any portion of which a violation occurs
19 constitutes a separate offense.

20 (e) This section does not preclude punishment under Section
21 189 or 192 of the Penal Code or any other provision of law that
22 provides a more severe punishment.

23 (f) For the purposes of this section:

24 (1) “Great bodily injury” means great bodily injury as defined
25 by Section 12022.7 of the Penal Code.

26 (2) “Imprisonment in state prison” means imprisonment in the
27 state prison for 16 months, or two or three years.

28 (3) “Unreasonable risk of great bodily injury or death” means
29 substantial probability of great bodily injury or death.

30 *SEC. 6. Section 42402 of the Health and Safety Code is*
31 *amended to read:*

32 42402. (a) Except as provided in Sections 42402.1, 42402.2,
33 42402.3, and 42402.4, any person who violates this part, any
34 order issued pursuant to Section 42316, or any rule, regulation,
35 permit, or order of a district, including a district hearing board, or
36 of the state board issued pursuant to Part 1 (commencing with
37 Section 39000) to Part 4 (commencing with Section 41500),
38 inclusive, is strictly liable for a civil penalty of not more than ~~one~~
39 *ten thousand dollars (\$1,000) (\$10,000).*

~~(b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, or any rule, regulation, permit or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars (\$10,000).~~

~~(2) (A) If a civil penalty in excess of one thousand dollars (\$1,000) for each day in which a violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act that was not the result of intentional nor negligent conduct.~~

~~(B) Subparagraph (A) shall not apply to a violation of federally enforceable requirements that occur at a Title V source in a district in which a Title V permit program has been fully approved.~~

~~(C) Subparagraph (A) does not apply to a person who is determined to have violated an annual facility emissions cap established pursuant to a market based incentive program adopted by a district pursuant to subdivision (b) of Section 39616.~~

~~(e) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes actual injury, as defined in subdivision (d) of Section 42400, to the health and safety of a considerable number of persons or the public, is liable for a civil penalty of not more than fifteen thousand dollars (\$15,000). *Each person, entity, or property affected by a discharge in violation of Section 41700 is a separate offense.*~~

~~(d)~~

~~(c) Each day during any portion of which a violation occurs is a separate offense.~~

~~SEC. 7. Section 42402.1 of the Health and Safety Code is amended to read:~~

~~42402.1. (a) Any person who negligently emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, pertaining to emission regulations or~~

1 limitations is liable for a civil penalty of not more than
2 twenty-five thousand dollars (\$25,000).

3 (b) Any person who negligently emits an air contaminant in
4 violation of Section 41700 that causes great bodily injury, as
5 defined by Section 12022.7 of the Penal Code, to any person or
6 that causes the death of any person, is liable for a civil penalty of
7 not more than one hundred thousand dollars (\$100,000). *Each*
8 *person, entity, or property affected by a discharge pursuant to*
9 *this subdivision is a separate offense.*

10 (c) Each day during any portion of which a violation occurs is
11 a separate offense.

12 *SEC. 8. Section 42402.2 of the Health and Safety Code is*
13 *amended to read:*

14 42402.2. (a) Any person who emits an air contaminant in
15 violation of any provision of this part, or any order, rule,
16 regulation, or permit of the state board or of a district, including
17 a district hearing board, pertaining to emission regulations or
18 limitations, and who knew of the emission and failed to take
19 corrective action, as defined in subdivision (b) of Section
20 42400.2, within a reasonable period of time under the
21 circumstances, is liable for a civil penalty of not more than forty
22 thousand dollars (\$40,000).

23 (b) Any person who owns or operates any source of air
24 contaminants in violation of Section 41700 that causes great
25 bodily injury, as defined by Section 12022.7 of the Penal Code,
26 to any person or that causes the death of any person, and who
27 knew of the emission and failed to take corrective action, as
28 defined in subdivision (b) of Section 42400.2, within a
29 reasonable period of time under the circumstances, is liable for a
30 civil penalty not to exceed two hundred fifty thousand dollars
31 (\$250,000). *Each person, entity, or property affected by a*
32 *discharge pursuant to this subdivision is a separate offense.*

33 (c) Each day during any portion of which a violation occurs is
34 a separate offense.

35 *SEC. 9. Section 42402.3 of the Health and Safety Code is*
36 *amended to read:*

37 42402.3. (a) Any person who willfully and intentionally
38 emits an air contaminant in violation of this part or any rule,
39 regulation, permit, or order of the state board, or of a district,
40 including a district hearing board, pertaining to emission

1 regulations or limitations, is liable for a civil penalty of not more
2 than seventy-five thousand dollars (\$75,000).

3 (b) Any person who willfully and intentionally, or with
4 reckless disregard for the risk of great bodily injury, as defined
5 by Section 12022.7 of the Penal Code, to, or death of, any
6 person, emits an air contaminant in violation of Section 41700
7 that results in an unreasonable risk of great bodily injury to, or
8 death of, any person, is liable for a civil penalty of not more than
9 one hundred twenty-five thousand dollars (\$125,000). If the
10 violator is a corporation, the maximum penalty may be up to five
11 hundred thousand dollars (\$500,000). *Each person, entity, or*
12 *property affected by a discharge pursuant to this subdivision is a*
13 *separate offense.*

14 (c) Any person who willfully and intentionally, or with
15 reckless disregard for the risk of great bodily injury, as defined
16 by Section 12022.7 of the Penal Code, to, or death of, any
17 person, emits an air contaminant in violation of Section 41700
18 that causes great bodily injury, as defined by Section 12022.7 of
19 the Penal Code, to any person or that causes the death of any
20 person, is liable for a civil penalty of not more than two hundred
21 fifty thousand dollars (\$250,000). If the violator is a corporation,
22 the maximum penalty may be up to one million dollars
23 (\$1,000,000). *Each person, entity, or property affected by a*
24 *discharge pursuant to this subdivision is a separate offense.*

25 (d) Each day during any portion of which a violation occurs is
26 a separate offense.

27 *SEC. 10. Section 42407.5 is added to the Health and Safety*
28 *Code, to read:*

29 *42407.5. For the purposes of this article, “entity” means any*
30 *firm, association, organization, partnership, business trust,*
31 *corporation, limited liability company, or company.*

32 *SEC. 11. Section 42409.5 is added to the Health and Safety*
33 *Code, to read:*

34 *42409.5. (a) On and after June 1, 2007, any serious and*
35 *chronic violator shall be liable for a civil penalty of not more*
36 *than one hundred thousand dollars (\$100,000) per day for each*
37 *violation described by this article, in addition to any other*
38 *penalty prescribed by this article.*

39 *(b) On or before March 1, 2007, the state board shall adopt,*
40 *by regulation, a definition of the term “serious and chronic*

1 violator” for the purposes of this section. In determining the
2 definition of a serious and chronic violator, the state board shall
3 consider all of the following:

- 4 (1) The magnitude of the violation.
- 5 (2) The scope of the violation.
- 6 (3) The severity of the violation.
- 7 (4) The degree that a violation jeopardizes the environment or
8 human health, safety, or welfare.

9 (5) The degree that a violation contributes to the failure to
10 accomplish goals or program objectives set by the state board.

11 (6) The degree that a violation makes it difficult to determine
12 if the violator is in compliance with other air quality laws, rules,
13 or regulations.

14 (c) All moneys collected from any serious and chronic violator
15 shall be deposited into the Enhanced Air Pollution Penalties
16 Fund, which is hereby created in the State Treasury. Moneys in
17 the fund shall be available, upon appropriation by the
18 Legislature, for the following purposes:

19 (1) Ten percent shall be allocated to the district where the
20 penalty was assessed.

21 (2) Fifty percent shall be allocated to local children’s health
22 initiatives in the district where the penalty was assessed to
23 ensure basic health coverage, including asthma services. If there
24 is no local children’s health initiative in the district where the
25 penalty was assessed, the allocation shall be made to the
26 California Healthy Kids Insurance Program, established by
27 Senate Bill 437 of the 2005-2006 Regular Session of the
28 Legislature.

29 (3) Forty percent shall be allocated to the state board for
30 enforcement of this article and for allocation to each district to
31 provide for enhanced enforcement programs within the district.

32 SEC. 12. No reimbursement is required by this act pursuant
33 to Section 6 of Article XIII B of the California Constitution
34 because the only costs that may be incurred by a local agency or
35 school district will be incurred because this act creates a new
36 crime or infraction, eliminates a crime or infraction, or changes
37 the penalty for a crime or infraction, within the meaning of
38 Section 17556 of the Government Code, or changes the definition
39 of a crime within the meaning of Section 6 of Article XIII B of the
40 California Constitution.

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**All matter omitted in this version of the bill
appears in the bill as amended in Senate,
May 4, 2005 (JR11)**

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